G. R. S. IX-5]

Reserve

Previous references.

cfs 211-17 Ds 182

File No. 211-17

1918.

Serial Nos. 3

(cfs)

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 3

Part B for Dec 18

SUBJECT.

Appeal against the order of acquittal passed by the City Magistrate of Bulawayo in C.C No 120 of 1917 on the file of this Court

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Ds Secy
23/12/18

W D 88—GPB—50,000—24-7-16

G.R.S. 11] 1918.

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 211-17

FILE HEADING.

Appeal against the order of acquittal passed by the City Magistrate of Bangalore in C.C. No 120 of 1917 on the file of his court.

From

The Govt. Advocate in Mysore

No. 99 Dated 14-11-1918 Received 18-11-1918

Diary No. 9.6559	Enclos. 1 copy & Judgt. Spare Copies.	Serial No. 3

BRIEF ABSTRACT OF LETTER.

Forwards copy of Judgment in Crl. Appeal No. 101 of 1917-18 on the file of the Chief Court & states that the order of acquittal has been set aside and the accused sentenced to a fine of Rs 100/- in default to R.I for one month

NOTES AND ORDERS.

Subd. for perusal.

21/11

First Member

GEON

Reed

12.12.18

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INWARD BRANCH. 17 DEC 1918

Notes—First Sheet.

GPB—30,000—12-9-11

No: 99
Encl: 1 Copy of Judgt.

15 NOV 1918

Office of the Government Advocate in Mysore,

Bangalore, dated the 14th November 1918.

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14th

DIARY No. C.S.S.R.

From

The Government Advocate in Mysore,

Bangalore.

Courts 211-17 3

Cts 211/15/1c 1/5 4/1922

To

The Chief Secretary to the Government

of His Highness the Maharaja of Mysore,

Bangalore.

S I R,

With reference to G. O. No. J 4666-7/Cts 211-17-2, dated the 15th May 1918, I have the honor to forward herewith a copy of Judgment in Criminal Appeal No. 101 of 1917-18 (Govt. of Mysore VS. Adaviappa), on the file of the -- Chief Court of Mysore, and to state that the order of acquittal passed by the City Magistrate has been set aside, and the accused convicted and sentenced to pay a fine of Rs. 100/-, in default to undergo rigorous imprisonment for one month.

I have the honor to be,

S I R,

Your most obedient servant,

Government Advocate.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Monday, the 30th day of September 1918.

Present.

Mr. Justice K.S. CHANDRASEKHARA AIYAR,

and

Mr. Justice T.PARAMASIVA IYER.

Criminal Appeal No. 101 of 1917 - 18.

The Government of Mysore ...Complainant ... APPELLANT
(The Taluk Police, Bangalore)

(By Mr. C.S. Doraswami Iyer, Government Advocate, for Government)

Vs.

Adaviappa ... Accused ... RESPONDENT

(By Mr. M. Srinivasa Rao)

Criminal Appeal against the order of acquittal passed by the City Magistrate of Bangalore (Mr. G.B.Neblikar) in Criminal Case No. 120 of 1917-18.

This appeal coming on for hearing on Monday, the 26th day of August 1918, the court delivered the following:

J U D G M E N T.

This is an appeal by Government from the order of acquittal

acquittal passed by the City Magistrate of Bangalore in a case in which Adaviappa, the respondent, was prosecuted by the Police for an offence punishable under section 182 of the Indian Penal Code.

There is hardly room for any doubt about the facts of the case. The records show that Adaviappa petitioned the Amildar and head of the Taluk Police, Bangalore, on the 17th January 1916, complaining that on the 6th Idem his enemy Chennabasappa and five others, armed severally with sticks, guns and choppers, broke into his shed, drove out the inmates (including himself), threatened to shoot and cut them down if they opened their mouths, and carried away jewels and other articles of the value of Rs. 330/-, and praying that the culprits might be punished. This petition was referred by the Amildar for investigation to the Police Inspector, who, having ascertained from respectable witnesses that Chennabasappa was at Poona at the time of the alleged dacoity, and further that the complainant was himself absent from home at the time he professed to have witnessed the occurrence, submitted to the City Magistrate a report in "B form" that the information contained in the petition was false. The Magistrate notified the complainant Adaviappa to attend and show cause, and on the 24th June 1916 passed an order in these terms:-

> "The complainant is present. He desires that the case may be gone through, but I do not consider it necessary, as the Police enquiry shows that it is full of falsehood. In fact the complainant himself was not at home at the alleged time. Hence this case will be struck off as false."

The City Magistrate was then applied to for sanction to prosecute Adaviappa, but did not grant the same on the ground

ground that his sanction was not necessary under section 195(a) of the Criminal Procedure Code for a prosecution under section 182 of the Indian Penal Code, and that the Police might themselves lay a complaint in the matter if they thought fit. Evidently the Magistrate treated the application, which was in general terms, as one made in respect of an offence falling under section 182 of the Indian Penal Code.

Sanction was however sought for and obtained from the District Superintendent of Police (an officer to whom both the Amildar as head of the Taluk Police and the Police Inspector were subordinate) "to proceed against the complainant for preferring a false charge". A complaint was accordingly laid against Adaviappa in the Court of the City Magistrate for offences punishable under sections 182 and 211; The Magistrate however, does not seem to have noticed the scope of the complaint, but, regarding it as one touching a prosecution solely for an offence under section 211, for which the sanction of a court was in his opinion necessary but was not produced, declined to take cognizance of the case and dismissed the complaint on 15th August 1916.

The Police Inspector moved the Magistrate again, on the 27th September 1916, to entertain the complaint in so far as it related to an offence punishable under section 182, as to which it was pointed out the sanction of a court was not necessary. Proceedings were thereupon commenced, and, after an interval of considerably over a year (during which there were at least three changes in the incumbency of the court with the inevitable adjournments and demands for de novo trials, as well as a change in the procedure of the trial from summary to regular with

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a partial re-hearing of the evidence) they terminated in the order of acquittal that is under appeal.

It may be mentioned here that, though the accused stated before the Magistrate that he had some witnesses to examine, he did not call any, counsel for defence preferring to rest his case primarily on a number of legal and technical contentions. No doubt he was well advised in so doing; for, in so far as the facts themselves are concerned, they have been so well and clearly established that it would be hopeless to controvert them, and in fact no attempt to do so has been made by the defence beyond a futile endeavour to suggest that the accused may have mistaken some one else for Chennabasappa and that if there was no dacoity there may have been some sort of a row! On the contrary we entertain no doubt, upon the evidence adduced by the prosecution, that the dacoity alleged never took place; that Adaviappa must have known that the charge brought by him was essentially a false one without any sort of just or lawful ground to support it; and that he must have made the charge deliberately with intent to cause annoyance and injury both to Chennabasappa, between whom and himself there was considerable ill-feeling, and to the other persons sought to be implicated along with that individual.

Of the contentions put forward by the defence, the greater number are manifestly untenable, and have been rightly rejected by the trying Magistrate. If is sufficient to say of them that they have reference mainly to the adequacy of the sanction available for the prosecution of the respondent Adaviappa, and proceed partly upon the erroneous assumption that the District Superintendent of Police had at one time <u>refused</u> sanction (the fact being as shown by the record that he merely thought at first

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that his sanction was unnecessary, but later on accorded sanction to the prosecution when it was made to appear that the same was necessary), and partly upon the argument that the sanction given by that officer became exhausted when the complaint based upon it was thrown out by the Magistrate. This argument ignores the fact, already adverted to, that the dismissal was limited to the complaint under section 211 of the Indian Penal Code, whereas the sanction was general and not confined to a prosecution for that offence; and, further, as pointed out in the judgment of the lower court, the application of the Police Inspector that the case might be proceeded with under section 182 did not amount in the circumstances to a new complaint which necessitated a fresh sanction.

The principal contention for the defence, the only one which was accepted by the learned Magistrate, and the acceptance of which determined his action in acquitting the accused, was that the case fell under section 211, and not under section 182, of the Indian Penal Code, and that in the absence of sanction for a prosecution under the former provision the case against the accused must fail. And it is round this same contention that the arguments in appeal have for the most part turned.

A large number of rulings bearing on the point were cited before us by the Government Advocate Mr. Doraswami Iyer and by Mr. K. Srinivasa Rao who appeared for the respondent Adaviappa. Without referring to them in detail, it will be sufficient to say that, while some of them are not easy to reconcile, and others not altogether easy to accept in their entirety, we have taken them all into our careful consideration. Our own inclination is, in the first place, to regard section 182 of the Indian Penal Code (conformably to the language used)

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as a general provision applicable to all cases in which any information is given to any public servant with the knowledge or belief that it is false and with the intention mentioned in the section, and consequently as embracing also all cases falling within section 211 where the information ~~xxxx~~ conveyed either amounts to the making of a false charge of an offence, or amounts to the institution or is made with a view to the institution of criminal proceedings, against any person. (Cp. dictum of Edge C.J. and Aikman, J. in 15 All. 336: "Although it is difficult to see what case could arise under section 211 to which section 182 could not be applied, yet section 182 would apply to a case which might not fall under section 211"). While therefore we should not be prepared to treat a case as outside section 182 merely because it ~~xxx~~ fell within section 211, we think at the same time that where the conditions requisite to the application of the latter section exist, particularly in the graver cases where the false charge ~~on~~ or the subject-matter of the criminal proceeding is of a serious nature, the more appropriate course is to apply that section rather than section 182 5 Cal. 184; 32 Cal. 180; 34 All. 522; 37 All. 110. This is in accordance with the ordinary rule requiring that a person accused of offences falling under more than one definition should be tried for the more important and serious of them. It will ~~xx~~ also afford to the accused when tried for an offence under section 211, the benefit of a regular trial as well as the right of appeal, which may not be available if he is tried summarily for an offence under section 182.

Queen Empress
v.
Raghu Tiwari

In the case that is now before us, the facts which have been established clearly go to constitute the specific offence

offence punishable under section 211 of preferring a false charge of dacoity, no less than the more general offence... the furnishing to a public servant of information known to be false, - which is punishable under section 182. That being so, the proper course was to have tried the accused for the offence first mentioned. But, as we have seen, the Magistrate before whom a complaint was originally laid in respect of both the offences declined to entertain it for the reason that "to prosecute a person under section 211 of the Indian Penal Code, sanction of a court is necessary under section 195 of the Criminal Procedure Code, and no such sanction was produced in the case. This is also the view taken by the Magistrate whose judgment is under appeal: treating the matter as falling solely under section 211, he holds that the prosecution must fail for want of a sanction under section 195 (1) (b) of the Criminal Procedure Code.

Now there is some difference of opinion as to whether the sanction of a court is invariably necessary for a prosecution in respect of an offence under section 211, Indian Penal Code. In 34 All. 622 a Divisional Bench of the Allahabad High Court seemed to hold that it was necessary - the Judges observing (among other things) that it would be an absurdity to treat sanction as a Sine qua non in the case of the lesser offence under section 182 but as unnecessary in the case of the more serious offence under section 211, and that "the true solution (of the difficulty felt) may be ... that the Legislature never intended section 211 of the Indian Penal Code to apply to anything except charges preferred in court to a Magistrate, and enacted section 182 to cover such a case as the present" (where the false report was made to the Police). Whatever may be said of the reasoning, the

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view enunciated seems to overlook the fairly obvious circumstance that clause (b) of section 195 (1) of the Criminal Procedure Code does not require the sanction of a court in all cases, but only in those in which the offence is committed in, or in relation to, any proceeding in such court. This has been pointed out by the Calcutta High Court in 36 Indian Cases 848, where it is further laid down as follows :-

> "No sanction is necessary where a false charge has been made to the police and has not been followed by a judicial investigation thereof by a court. The position is different where, upon the police report as to the falsity of the complaint, the complainant insists upon a judicial investigation; if he does so he is deemed to have preferred a complaint to the Magistrate; if the Magistrate finds his case to be false, a sanction would be requisite under section 195 (1) (b), as the offence may be said to have been committed in a proceeding in a court".

This view of the law was quoted with approval in 36 Indian Cases 897, where, since the information laid before the police was followed by a complaint to a court based on the same allegations and making the same charge, the sanction of the court was held to be necessary. Several other cases are collected in Sohoni's Code of Criminal Procedure, 9th Edition, Page 464, which suggest that where a false charge made before the police is not followed up by a complaint before a court, or by a demand for a judicial inquiry amounting to a complaint, sanction is not necessary under section 195 (1) (b); also that it is not necessary even if (as in the case before us) the Magistrate has, on a report by the police that the case was false, ordered

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its removal from their file. Reference may also be mad in the present connection to 18 Mys. C.C.R. 42, where Mr Justice Wallace observed that

> "an offence committed sometime prior to any proceed ings in court upon it, and regarding which no pro ceedings in court at all may be taken, cannot be s to have been committed in relation to any proceedi in any court", and that "an offence 'in relation t a proceeding in a court' can be committed only at t time when, or after, that proceeding commences, and not at a prior time when the possibility of a proce ing is hypothetical or only in contemplation."

In the present case the false charge made before the police was not followed up by a complaint to the Magistrate Adaviappa's oral statement that "the case may be gone through" cannot be regarded and was not regarded by the Magistrate, as a complaint requiring to be dealt with as such. The Magistrate had only the "B" report before him, and he did not consider any further inquiry by himself necessary before ordering the case to be "struck off" the file of the police as false. In the circumstances we do not think the sanctio of the Magistrate was necessary for a prosecution in respect of an offence under section 211. But such a prosecution was precluded by the somewhat ill-judged action of the Magistrate then presiding over the court in dismissing the complaint of the police so far as it related to that offence. In the peculiar circumstances, seeing that no evasion of the ~~statutary~~ salutary provisions of the law in regard to previous sanction such as was very rightly deprecated by Heaton J. in the case reported in 15 Bom. L.R. 574 (p. 577), has been ~~ina~~ involved in the prosecution having proceeded under section 182 for the less serious offence, and seeing also that

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the respondent has had the benefit of a full and regular trial in the court below, we consider that he may without impropriety be dealt with in respect of the latter offence. As we have already pointed out, there is no doubt whatever about the facts, and in particular about the falsity of the information and the intention with which it was furnished by the respondent.

We allow the appeal by Government, set aside the order of acquittal, and convict the respondent Adaviappa of the offence punishable under section 182, Indian Penal Code, for which he was tried. As regards sentence, we have taken into consideration the fact that the case has been hanging over the respondent's head for over two years and a half, during which he must have undergone considerable anxiety and some expenses; it does not appear that as the result of the false information given by him the persons complained against were subjected to harassment or material inconvenience or injury. In the circumstances we consider that a sentence of Rs. 100/- fine will be sufficient to meet the ends of justice, and we direct that Adaviappa be sentenced accordingly, in default of payment, to one month's rigorous imprisonment.

(Sd.) K. S. Chandrasekhara Aiyar

J U D G E.

(Sd.) V. Paramaswara Ayyar

J U D G E.

N.G.

'Copy'
S Krishnaiah
Registrar